

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Mr. Justice Jayanta Kumar Biswas.

W.P.No.18653 (W) of 2009

Sri Madhab Kumar Bandhopadhyay

v.

The State Chief Information Commissioner etc. & Ors.

Mr. B.R.Ghoshal

Mr. D.K.Mukherjee

Mr. Ujjal Kumar Dutta

...for the petitioner.

Mr. Tapas Dutta

...the fourth respondent(in person).

Heard on: January 3, 2013.

Judgment on: January 3, 2013.

The Court:- The petitioner in this WP under art.226 of the Constitution of India dated October 29, 2009 is questioning an order of the West Bengal Information Commission dated September 3, 2009 (WP p.57) imposing on him Rs.25,000 penalty under s.20(1) of the Right to Information Act, 2005.

The fourth respondent submitted an application under s.6 of the Right to Information Act, 2005 to the State Public Information Officer, Department of Municipal Affairs, Government of West Bengal on November 4, 2008. He requested Uttarpara-Kotrung Municipality to give him the information specified in the application. By a letter dated November 6, 2008 the Municipal Affairs Department transferred the application to the State Public Information Officer and the Chairman of the Municipality.

While the petitioner, the State Public Information Officer of the Municipality, did not do anything, the Chairman thereof wrote a letter dated December 1, 2008. The relevant parts of the letter are quoted below:-

“Your application under Right to Information Act,2005 is vague in material particulars. Then again you applied before the Municipality disclosing an address which is outside the territorial jurisdiction of the Uttarpara-Kotrung Municipality.

In such circumstances the Municipality is not in a position to give you the information sought by you.”

Feeling aggrieved, the fourth respondent filed an appeal to the Appellate Authority, Department of Municipal Affairs, Government of West Bengal on December 29,2008. He was informed that he should appeal first to the Municipality and then to the Commission. He, however, chose to file a complaint, presumably under s.18 of the Right to Information Act, 2005, to the Commission on January 2,2009. Entertaining the complaint, the Commission passed an order dated January 9, 2009.

The relevant parts of the order of the Commission dated January 9, 2009 are quoted below:-

“ Perused the complaint dated 02.01.2009 of Shri Tapas Dutta.

It appears that though the Chairman of Uttarpara-Kotrung Municipality is not the State Public Information Officer, he has given a reply denying information on the ground that the information sought for is vague and the applicant is not a resident of the municipality.

On scrutiny of records, it appears that the items of information are not vague but may be lengthy. This cannot be any ground to deny information.

Further, section 3 of the Right to Information Act, 2005 gives right to every citizen of India to receive information from the Public Authority, no matter where his place of residence is.

The Commission, therefore, orders that the information as sought for by the applicant shall be furnished by the State Public Information Officer of the municipality within a fortnight from the date of receipt of this order.”

The petitioner wrote a letter dated February 2, 2009 asking the fourth respondent to give him a copy of the application for information dated November 4,2008. Accordingly, with a covering letter dated February 6,2009 the fourth respondent gave him a copy of the application for information dated November 4,2008.

In spite of receipt of a copy of the application for information dated November 4, 2008 once again on February 13,2009 and the order of the

Commission dated January 9, 2009, the petitioner did not give the fourth respondent the requested information. Under the circumstances, on March 25, 2009 the fourth respondent submitted a complaint under s.18 of the Right to Information Act, 2005 to the Commission.

The petitioner did not comply with the order, though in his letter dated February 2, 2009 he had said that he would comply with the order once he was given a copy of the application for information. The Chairman of the Municipality filed an appeal against the order of the Commission dated January 9, 2009 to the Joint Secretary & Appellate Authority, Department of Municipal Affairs, Government of West Bengal on April 1, 2009. It is submitted that the appeal was subsequently withdrawn.

Considering the fourth respondent's complaint dated March 25, 2009, the Commission issued a show cause notice dated April 27, 2009. The Commission gave the petitioner an opportunity to explain why Rs.25,000 penalty should not be imposed on him for his failure to give the fourth respondent information according to his request and even after the order of the Commission. In response to the show cause notice dated April 27, 2009 the petitioner submitted his reply dated May 12, 2009.

The petitioner's reply was that in spite of his best efforts he could not serve on the fourth respondent a letter dated April 20, 2009 he wrote, and that the things stated in his letter dated April 20, 2009 would show that he had complied with the order of the Commission. A copy of the petitioner's letter dated April 20, 2009 is at p.43 of the WP. It was written to the fourth respondent for informing the fourth respondent that in spite of best efforts the information wanted by the fourth respondent could not be supplied.

After considering the petitioner's reply to the show cause notice, the Commission issued a notice dated June 25, 2009 fixing July 23, 2009 for personal hearing. It is only thereafter that with a covering letter dated July 16, 2009 the

petitioner gave the fourth respondent all the information according to his application dated November 4, 2008. The Commission heard the petitioner and held that he was liable to suffer Rs.25,000 penalty.

The relevant parts of the order of the Commission are quoted below:-

“6. From the apathetic manner of dealing with the instant RTI application, first by the Chairman and secondly by the SPIO, speaks volumes about the extreme reluctance on the part of the Public Authority to disclose the information legitimately claimed by Shri Dutta. It appears that the Public Authority of the Municipality has taken the provisions of RTI Act for a ride and expects to go unscathed for violation of the Act which the Commission can ill afford to.

7. Though the representatives of the Municipality admitted their fault in unison that does not absolve the SPIO from being penalized, moreover, the Act does not allow the Commission to exonerate the SPIO from paying penalty on the ground of admission of guilt.

8. The Commission also doubts such admission because during the course of hearing it is revealed that the information has been furnished only 2 days ago from the scheduled date of hearing. This appears to be yet another example of trickily avoiding penalty. The information which could be given just before the conduct of hearing could well be given much earlier.”

Mr. Ghoshal appearing for the petitioner has argued as follows. Section 20 of the Right to Information Act, 2005 was not applicable to the case; for it was neither a case of refusal to receive application for information, nor a case of refusal to give information, nor a case of denial of a request for information mala fide, nor a case of knowingly giving incorrect, incomplete or misleading information, nor a case of destruction of the information which was the subject of the request, nor a case of obstructing any information.

Mr. Ghoshal's further argument is this. In any case, s.20 of the Right to Information Act, 2005 could not be applied to the case, because, though belatedly, the petitioner, not a legally trained person, gave the fourth respondent all the information according to his s.6 application. Even if s.20 was applicable, on the facts of the case, the maximum penalty could not be imposed; for the legislation did not contemplate imposition of the maximum penalty in each and every case irrespective of the gravity of the proven charge.

The fourth respondent appearing in person has argued in justification of the order of the Commission imposing on the petitioner the maximum penalty provided by sub-s.(1) of s.20 of the Right to Information Act, 2005.

The Right to Information Act, 2005, s.18, provides, inter alia, that it shall be the duty of a State Information Commission to receive and inquire into a complaint from any person (a) who has been refused access to any information requested under the Act, and (b) regarding any matter related to access to records under the Act.

The petitioner, though was under an obligation to respond to the application for information dated November 4, 2008, did not take any step until he wrote the letter dated February 2, 2009 asking the fourth respondent to give him a copy of the application for information so that he might comply with the order of the Commission dated January 9, 2009. Quite unauthorizedly and for undisclosed reasons, the Chairman of the Municipality dealt with the fourth respondent's s.6 application.

It is evident from the order of the Commission dated January 9, 2009 that the Commission did not impose any penalty, though it could impose penalty on the petitioner against whom the first complaint dated January 2, 2009 was filed by the fourth respondent, but only directed the petitioner to give the fourth respondent all the information according to his s.6 application. In his letter dated February 2, 2009 the petitioner clearly said that he had received the order of the Commission dated January 9, 2009.

Once again the Chairman of the Municipality took a curious step. He filed an appeal against the order of the Commission dated January 9, 2009. The next curious step was taken by the petitioner and it was that he wrote the letter dated April 20, 2009 addressed to the fourth respondent regarding withdrawal of the Chairman's appeal. In his reply to the show cause notice issued on the basis

of the fourth respondent's second s.18 complaint, the petitioner requested the Commission to consider the things stated in his letter dated April 20,2009.

Nothing written in the letter of the petitioner dated April 20, 2009 constitutes a reasonable cause for the petitioner's failure to give the fourth respondent the requested information. Sensing real trouble the petitioner finally wrote the letter dated July 16,2009 with which he gave the fourth respondent all the information according to the s.6 application dated November 4,2008. The Commission held that the petitioner ultimately gave the information with a view to escaping the penalty under s.20(1).

It is wrong to say that the provisions of s.20 were not applicable to the case. They are applicable to a complaint filed under s.18 of the Act. It is not the case that the complaint did not make out any case under s.18 of the Right to Information Act, 2005. Admittedly, the petitioner did not respond to the fourth respondent's application for information dated November 4, 2008 till February 2, 2009. He complied with the s.18 order of the Commission dated January 9,2009 only on July 16,2009.

I am unable to accept that once the petitioner complied with the order of the Commission dated January 9, 2009, though belatedly, penalty under s.20(1) of the Right Information Act, 2005 could not be imposed on him. Nor do I see any reason to accept the argument that in each and every case the Commission is not supposed to impose Rs.250 penalty per day.

It is evident that in all the cases mentioned in sub-s.(1) of s.20, it is the duty of the Commission to impose a Rs.250 daily penalty till the application for information is received or the information is given. The only thing is that the total penalty amount should not exceed Rs.25,000. The proportionality principle based on the gravity of the proven charge concept cannot apply to a case under s.20. That will amount to unauthorised reduction of the penalty amount. A s.20 case can be a case of penalty or no penalty, but not a case of reduced penalty.

I am, therefore, of the view that the Commission has committed no wrong, and that the impugned order is not vitiated by any jurisdictional error. Accordingly, I dismiss the WP. No costs.

Mr. Mukherjee assisting Mr Ghosal has prayed for an order permitting the petitioner to pay the penalty from next month. Mr. Dutta has submitted that he has no objection. I think the prayer should be allowed. Hence I allow it and order that the petitioner shall pay the penalty in installments fixed by the Commission from next month, and that the Municipality shall deduct the amounts from his salary from February 2013.

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(Jayanta Kumar Biswas,J)